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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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In The Matter Of The Arbitration Between:	:	
	:	
BLUE FIN TANKERS INC,	:	
	:	
Petitioner,	:	
	:	16 Civ.
-and-	:	
	:	
TESORO FAR EAST MARITIME COMPANY,	:	
	:	
Respondent,	:	
	:	
-----X	:	

**MEMORANDUM OF LAW IN SUPPORT OF PETITION TO  
COMPEL ARBITRATION AND APPOINT ARBITRATOR**

Petitioner, BLUE FIN TANKERS INC ("Petitioner"), submits this Memorandum in Support of its Petition to Compel Arbitration and Appoint Arbitrator. For the reasons set forth below, Petitioner's Motion should be granted.

**Facts**

The facts are full supported by the Exhibits to the affidavit of Bengt E. Nergaard, sworn to on the 13<sup>th</sup> day of May, 2016 ("Nergaard Aff."), which are incorporated herein.

## Argument

### THE COURT HAS JURISDICTION TO ENTER AN ORDER APPOINTING AN ARBITRATOR ON BEHALF OF RESPONDENT AND COMPELLING IT TO ARBITRATE

Sections 4 and 5 of the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.*, provide, in relevant part, as follows:

A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under Title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement.

9 U.S.C. § 4.

\* \* \* \* \*

If in the agreement provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire, such method shall be followed; but if no method be provided therein, or if a method be provided and any party thereto shall fail to avail himself of such method, **or if for any other reason there shall be a lapse in the naming of an arbitrator** or arbitrators or umpire, or in filling a vacancy, then upon the application of either party to the controversy **the court shall designate and appoint an arbitrator** or arbitrators or umpire, as the case may require, who shall act under the said agreement with the same force and effect as if he or they had been specifically named therein; and unless otherwise provided in the agreement the arbitration shall be by a single arbitrator.

9 U.S.C. § 5 (emphasis provided).

It is axiomatic that U.S. general maritime law does not require a charter party to be executed to create a binding contract. *See, Atlantic & Great Lakes S.S. Corp. v. Steelmet Inc.*, 565 F.2d 848 (2d Cir. 1977).

The Charters provides for New York arbitration. (Nergaard Aff., ¶5). Petitioner has appointed a New York commercial arbitrator and Respondent has refused to arbitrate. (*Id.* at ¶6, 8). Accordingly, the Court has personal jurisdiction over Respondent on the

basis of its agreement to arbitrate in New York and "shall designate and appoint an arbitrator" on its behalf and compel arbitration. *See American Bureau of Shipping v. Tencara Shipyard S.P.A.*, 170 F.3d 349, 352 (2d Cir. 1999) ("It is well-settled that federal courts applying New York law have personal jurisdiction over parties that agree to arbitrate their disputes in New York [citation omitted] . . . if the Owners are estopped [as one of the five theories of binding a non-signatory] from denying their obligations under the arbitration agreement . . . it follows that they are also estopped from asserting a lack of personal jurisdiction based on that agreement.")

### **Conclusion**

For the reasons set forth above, Petitioner respectfully requests that this Court grant the petition and grant such other and further relief as may be equitable.

Dated: New York, New York  
May 16, 2015

Respectfully submitted

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